

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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JOAN BALMIZ,

Plaintiff,

Case No. 24-cv-1037-pp

v.

MARTIN J. O'MALLEY,

Defendant.

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**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED  
WITHOUT PREPAYING FILING FEE (DKT. NO. 2)**

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The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. She also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

Federal law requires a person who files a complaint in federal court to pay \$405—a filing fee of \$350 (28 U.S.C. §1914(a)) and a \$55 administrative fee (Judicial Conference of the United States District Court Miscellaneous Fee Schedule Effective the December 1, 2023, #14). To allow the plaintiff to proceed without prepaying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff states that she is not

employed, she is not married, and she has no dependents she is responsible for supporting. Dkt. No. 2 at 1. The only income listed by the plaintiff is \$291 per month in foodshare; the plaintiff's expenses are \$86 per month for a cell phone and \$291 per month for food. Id. at 2-3. The plaintiff does not own her home, a car or any other property of value; she has \$0.23 in cash on hand or in a checking or savings account. Id. at 3-4. Under "Other Circumstances," the plaintiff says, "Lives with her mom, who pay housing and living expenses (she contributes her foodshare monthly amount towards food). Id. at 4. The plaintiff has demonstrated that she cannot pay the \$405 fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

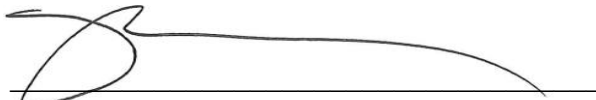
The plaintiff's complaint indicates that she was denied benefits for lack of disability, that she is disabled and that the conclusions and findings of fact by the Commissioner when denying benefits are not supported by substantial evidence and are contrary to law and regulation. Dkt. No. 1 at 1. At this early stage in the case, and based on the information in the plaintiff's complaint, the

court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

Dated in Milwaukee, Wisconsin this 16th day of August, 2024.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read 'P. Pepper', is written over a horizontal line.

**HON. PAMELA PEPPER**  
**Chief United States District Judge**